

APPEAL NO. 030805
FILED MAY 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 10, 2003. With regard to the two issues before him, the hearing officer determined that the appellant's (claimant) compensable low back injury does not extend beyond a lumbar sprain/strain and that the decision of the independent review organization (IRO) in favor of spinal surgery was correct and should be upheld. The hearing officer's determination on the IRO issue has not been appealed, and in fact, the parties stipulated that the IRO determination was correct. The hearing officer's determination on the IRO issue has become final pursuant to Section 410.169.

The claimant appealed, citing medical evidence, and contended that her spondylosis and spondylolisthesis was caused, or least aggravated, by the compensable injury and that the condition was not treated sooner because the doctors were more concerned with her cervical problems than the lumbar problems. The respondent (carrier) responded, asserting that the claimant only sustained a compensable strain/sprain which resolved in 1992 or 1993.

DECISION

Affirmed.

The claimant sustained a compensable low back injury lifting some heavy boxes on _____. Although the claimant initially had low back complaints, subsequently, the claimant had cervical complaints and had cervical spinal surgery on March 10, 1993. There was a brief mention of low back pain in December 1994, but no documented treatment for a lumbar back condition for six years. None of the doctors that rated the claimant's compensable injury mentioned or rated the lumbar spine. Two orthopedic surgeons testified at the CCH and the claimant's treating doctor said that the claimant had always complained of low back pain, but that he had neglected to document it. There was considerable testimony regarding spondylolisthesis as being a "developmental defect" or "congenital" defect and that in perhaps 20% of cases, that condition requires surgery without a trauma.

In short, the medical evidence was in conflict and the hearing officer found that the "conditions of spondylosis, spondylolisthesis, and degenerative disc disease were present at the time of the _____, incident, and none of those conditions were aggravated or accelerated by the work injury." The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appeals body, we will not

substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant argues that the carrier waived the right to dispute the lumbar conditions of spondylosis or spondylolisthesis because it was not raised prior to the IRO decision. First, we would note that carrier waiver was not an issue before the hearing officer and the hearing officer correctly only addressed the issues before him. Secondly, it was the IRO that indicated that the complained-of conditions were not part of the compensable injury. We do not read Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.308(f)(7) (Rule 133.308(f)(7)) as creating carrier waiver. Further, Rule 124.3(c) provides that carrier waiver does not apply to disputes of extent of injury.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge